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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/780,743

02/19/2004

Hideyuki Yanami

KAS-199

1792

24956

7590

05/16/2008

MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.
1800 DIAGONAL ROAD
SUITE 370
ALEXANDRIA, VA 22314

EXAMINER

WRIGHT, PATRICIA KATHRYN

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

05/16/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/780,743</p>	<p>Applicant(s) YANAMI ET AL.</p>	
	<p>Examiner P. Kathryn Wright</p>	<p>Art Unit 1797</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 May 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 9-19.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). 10/07/2004
13. ☒ Other: See Continuation Sheet.

/Jill Warden/
Supervisory Patent Examiner, Art Unit 1797

Continuation of 3. NOTE: The proposed amendment introduces new limitations into claims 9, 15, 16, and 19 which would required further consideration and/or search. For example, proposed claims 9 and 15 now recite a sample, a sample container and a reaction cuvette.

Continuation of 11. does NOT place the application in condition for allowance because: In response to the previous rejection of claims 9-10, 13-16 and 19 under 35 USC 102(b) as being anticipated by Itoh (US Patent No. 5,445,037), Applicant argues that in the embodiments of the present invention, as explained with reference to Figs. 3 and 8, the probes 15 and 16 move from container 61 to a reaction cuvette at sample discharge position 62 following paths 65 and 66, respectively. In this manner, the sample in the sample container is discharged into the same reaction container at the sample discharge station using the plurality of sample probes.

In response to Applicant's argument that the Itoh reference fails to show certain features of applicant's invention, the Examiner notes that the features upon which applicant relies (same reaction cuvette) is not recited in the proposed claims. The claims merely recite the a sample is discharged into a reaction cuvette using the plurality of probes. This language does not require the sample be discharged into the same reaction cuvette. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. Furthermore, proposed claim 9 does not positively recite the sample container and the reaction cuvette. Only the "sample in a sample container" appears to be a positively recited element of the invention, which the Examiner considers an intended use of the invention.

Continuation of 13. Other: Applicant's arguments with respect to the IDS filed 10/2004 are convincing since the European Search Report cites the EP 601213 under category A. Therefore, IDS filed Oct. 07, 2004 has been considered by the Examiner .